

Appeal Nos. 2023-1218, 2023-1274

UNITED STATES COURT OF APPEALS

for the

FEDERAL CIRCUIT

SUNOCO PARTNERS MARKETING & TERMINALS L.P.,
Plaintiff-Appellant,

v.

POWDER SPRINGS LOGISTICS, LLC,
MAGELLAN MIDSTREAM PARTNERS L.P.,
Defendants-Cross-Appellants.

Appeals from the United States District Court for the District of Delaware
in No. 1:17-cv-01390-RGA, Judge Richard G. Andrews

**APPELLANT'S UNOPPOSED MOTION FOR A
30-DAY EXTENSION OF TIME TO FILE RESPONSE AND REPLY BRIEF**

JOHN R. KEVILLE
Attorney of Record

Of Counsel:

RICHARD L. STANLEY
P.O. Box 7967
Houston, TX 77270
(832) 656-4277

MICHELLE C. REPLOGLE
MICHAEL C. KRILL
SHEPPARD, MULLIN, RICHTER
& HAMPTON LLP
700 Louisiana Street, Suite 2750
Houston, Texas 77002
(713) 431-7100

*Attorneys for
Plaintiff-Appellant Sunoco Partners
Marketing & Terminals L.P.*

September 21, 2023

FORM 9. Certificate of Interest

Form 9 (p. 1)
July 2020

**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

CERTIFICATE OF INTEREST

Case Number 2023-1218, 2023-1274

Short Case Caption Sunoco Partners Marketing & Terminals L.P. v. Powder Springs Logistics, LLC

Filing Party/Entity Sunoco Partners Marketing & Terminals L.P.

Instructions: Complete each section of the form. In answering items 2 and 3, be specific as to which represented entities the answers apply; lack of specificity may result in non-compliance. **Please enter only one item per box; attach additional pages as needed and check the relevant box.** Counsel must immediately file an amended Certificate of Interest if information changes. Fed. Cir. R. 47.4(b).

I certify the following information and any attached sheets are accurate and complete to the best of my knowledge.

Date: 01/13/2023

Signature: /s/ John R. Keville

Name: John R. Keville

FORM 9. Certificate of Interest

Form 9 (p. 2)
July 2020

1. Represented Entities. Fed. Cir. R. 47.4(a)(1).	2. Real Party in Interest. Fed. Cir. R. 47.4(a)(2).	3. Parent Corporations and Stockholders. Fed. Cir. R. 47.4(a)(3).
Provide the full names of all entities represented by undersigned counsel in this case.	Provide the full names of all real parties in interest for the entities. Do not list the real parties if they are the same as the entities. <input checked="" type="checkbox"/> None/Not Applicable	Provide the full names of all parent corporations for the entities and all publicly held companies that own 10% or more stock in the entities. <input type="checkbox"/> None/Not Applicable
Sunoco Partners Marketing & Terminals L.P.		Energy Transfer L.P.

☐ Additional pages attached

FORM 9. Certificate of Interest

Form 9 (p. 3)
July 2020

4. Legal Representatives. List all law firms, partners, and associates that (a) appeared for the entities in the originating court or agency or (b) are expected to appear in this court for the entities. Do not include those who have already entered an appearance in this court. Fed. Cir. R. 47.4(a)(4).

☒ None/Not Applicable ☐ Additional pages attached

Winston & Strawn LLP	Eric S. Schlichter	Richard T. McCarty
Phillips, McLaughlin & Hall, P.A.	Megan C. Haney	David A. Bilson
John C. Phillips , Jr.		

5. Related Cases. Provide the case titles and numbers of any case known to be pending in this court or any other court or agency that will directly affect or be directly affected by this court's decision in the pending appeal. Do not include the originating case number(s) for this case. Fed. Cir. R. 47.4(a)(5). See also Fed. Cir. R. 47.5(b).

☐ None/Not Applicable ☐ Additional pages attached

Sunoco Partners Marketing & Terminals L.P. v. U.S. Venture, et al., 1:15-cv-08178 (N.D. Ill. 2015)		
Sunoco Partners Marketing & Terminals L.P. v. U.S. Venture, Inc., No. 22-1899 (Fed. Cir. 2022)		

6. Organizational Victims and Bankruptcy Cases. Provide any information required under Fed. R. App. P. 26.1(b) (organizational victims in criminal cases) and 26.1(c) (bankruptcy case debtors and trustees). Fed. Cir. R. 47.4(a)(6).

☒ None/Not Applicable ☐ Additional pages attached

Pursuant to Federal Circuit Rules 26(b) and 27 and Federal Rule of Appellate Procedure 27, Plaintiff-Appellant Sunoco Partners Marketing & Terminals L.P. (“Sunoco”) respectfully requests a 14-day extension of time in which to file its Response and Reply Brief, from September 29, 2023 to October 13, 2023. This is the second extension that Sunoco has sought in this matter with respect to its combined Response and Reply Brief. Sunoco previously received an unopposed extension of 30 days to its Response and Reply Brief (Dkt. No. 30) and unopposed extensions totaling 51 days for its Opening Brief (Dkt. Nos. 14, 16, 18), while Defendants-Cross-Appellants received unopposed extensions totaling 74 days for their Opening and Response Brief (Dkt. Nos. 21, 23).

Defendants-Cross-Appellants have been consulted about this motion and have graciously consented to the requested extension, so no opposition will be filed.

As explained in the Declaration of Michelle C. Replogle, Sunoco has good cause to request this extension. First, Sunoco’s lead counsel in this appeal, John R. Keville, is lead trial counsel in *Zest Labs Inc. v. Walmart Inc.*, No. 4:18-cv-00500 (E.D. Ark. 2018), which has involved extensive post-trial discovery including an out-of-town deposition on August 29, 2023, related to a motion for a new trial based on newly discovered evidence. In addition, Mr. Keville is lead trial counsel in *MGA Entertainment Inc. v. Harris et al.*, No. 2:20-cv-11548-JVS-AGR (C.D. Cal. 2020). Following a three-week jury trial in May 2023, Mr. Keville was involved in

preparing extensive and complicated briefing on a motion for a new trial in August 2023 and in preparing for the hearing on the highly-contested motion on September 11, 2023, which required Mr. Keville to travel to California for several days.

Second, Mr. Keville had to travel to New York unexpectedly for several days on two separate occasions to handle personal family-related matters within the past month, including most recently on September 13–17, 2023. Hence, this motion is not being filed for purposes of delay, but in order to most efficiently manage the conflicting dockets and varying obligations of the attorneys responsible for preparing and filing Sunoco’s upcoming brief.

Sunoco therefore submits that good cause exists for the requested extension, and believes that the requested extension represents the minimum additional amount of time currently believed necessary to prepare and finalize its Response and Reply Brief in a manner that would be of most assistance to the Court. Accordingly, Sunoco respectfully requests that the deadline for its Response and Reply Brief be extended to and including Friday, October 13, 2023.

Dated: September 21, 2023

Respectfully submitted,

/s/ Michelle C. Replogle
Michelle C. Replogle
SHEPPARD, MULLIN,
RICHTER & HAMPTON, LLP
700 Louisiana Street, Suite 2750
Houston, Texas 77002-2791
(713) 431-7100

*Counsel for Appellant
Sunoco Partners Marketing &
Terminals L.P.*

DECLARATION OF MICHELLE C. REPLOGLE

1. I am a member of the bar of this Court and a partner in the Houston, Texas office of the law firm of Sheppard, Mullin, Richter & Hampton, LLP.

2. I have previously entered an appearance in this Court on behalf of Appellant Sunoco Partners Marketing & Terminals L.P. (“Sunoco”) in the subject appeals (Nos. 2023-1218, 2023-1274). I also was one of the counsel who represented Sunoco in the underlying proceeding held before the United States District Court for the District of Delaware.

3. I am making this declaration in support of Sunoco’s request for a 14-day extension of time to file its Response and Reply Brief in this matter. I have knowledge of the facts set forth in Sunoco’s motion, and would be able to testify to them if called as a witness.

4. Sunoco’s Response and Reply Brief is currently due on September 29, 2023. This is Sunoco’s second request for an extension of time for its Response and Reply Brief. Sunoco previously received an unopposed extension of 30 days to its Response and Reply Brief (Dkt. No. 30) and unopposed extensions totaling 51 days for its Opening Brief (Dkt. Nos. 14, 16, 18), while Defendants-Cross-Appellants received unopposed extensions totaling 74 days for their Opening and Response Brief (Dkt. Nos. 21, 23).

5. On September 20, 2023, counsel for Sunoco sent an email to counsel for Defendants-Cross-Appellants regarding this motion and Sunoco's request for a 14-day extension of time. On September 21, 2023, by email, Defendants-Cross-Appellants confirmed that they do not oppose this motion.

6. Sunoco's lead counsel in this appeal, John R. Keville, is lead trial counsel in *Zest Labs Inc. v. Walmart Inc.*, No. 4:18-cv-00500 (E.D. Ark. 2018), which has involved extensive post-trial discovery including an out-of-town deposition on August 29, 2023, related to a motion for a new trial based on newly discovered evidence. In addition, Mr. Keville is lead trial counsel in *MGA Entertainment Inc. v. Harris et al.*, No. 2:20-cv-11548-JVS-AGR (C.D. Cal. 2020). Following a three-week jury trial in May 2023, Mr. Keville was involved in preparing extensive and complicated briefing on a motion for a new trial in August 2023 and in preparing for the hearing on the highly-contested motion on September 11, 2023, which required Mr. Keville to travel to California for several days.

7. In addition, Mr. Keville had to travel to New York unexpectedly for several days on two separate occasions to handle personal family-related matters within the past month, including most recently on September 13–17, 2023.

I declare under penalty of perjury under 28 U.S.C. § 1746 that the foregoing
is true and correct.

Executed on September 21, 2023.

/s/ Michelle C. Replogle
Michelle C. Replogle

**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME
LIMITATIONS**

Case Number: 2023-1218, 2023-1274

Short Case Caption: Sunoco Partners Marketing & Terminals L.P. v.

Powder Springs Logistics, LLC

Instructions: When computing a word, line, or page count, you may exclude any items listed as exempted under Fed. R. App. P. 5(c), Fed. R. App. P. 21(d), Fed. R. App. P. 27(d)(2), Fed. R. App. P. 32(f), or Fed. Cir. R. 32(b)(2).

The foregoing filing complies with the relevant type-volume limitation of the Federal Rules of Appellate Procedure and Federal Circuit Rules because it meets one of the following:

- ☒ the filing has been prepared using a proportionally-spaced typeface and includes 423 words.
- ☐ the filing has been prepared using a monospaced typeface and includes _____ lines of text.
- ☐ the filing contains _____ pages / _____ words / _____ lines of text, which does not exceed the maximum authorized by this court's order (ECF No. _____).

Date: September 21, 2023 Signature: /s/ Michelle C. Replogle

Name: Michelle C. Replogle

CERTIFICATE OF SERVICE

I hereby certify that, on September 21, 2023, I caused a copy of the foregoing document to be filed electronically with the U.S. Court of Appeals for the Federal Circuit using the CM/ECF system, which will send a notification to all counsel of record.

/s/ Michelle C. Replogle
Michelle C. Replogle